

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. J.

From: Wayne D. Houle, PE, Director of Engineering

Action ☒

Discussion ☐

Date: April 16, 2013

Information ☐

Subject: Joint Powers Agreement With City of Hopkins For Second Street South Roadway Reconstruction

Action Requested:

Approve attached Joint Powers Agreement with City of Hopkins for the reconstruction of 2nd Street South and authorize Mayor and Manager to sign agreement.

Information / Background:

The 2013-2017 Capital Improvement Plan included a joint project with the City of Hopkins to reconstruct the border street of 2nd Avenue South from Monroe Avenue to Harrison Avenue, see project number ENG-13-008. This agreement clarifies the responsibilities of the project along with identifying the future maintenance of the roadway. The estimated cost to the City of Edina is approximately \$81,529.00; the CIP allocated \$150,000 for this project. Legal counsels from both cities have reviewed the proposed agreement.

Attachments:

Joint Powers Agreement Between the City of Edina and the City of Hopkins for the 2013 Street & Utility Improvements Project Specifically 2nd Street South from Monroe Avenue to Harrison Avenue

**JOINT POWERS AGREEMENT
BETWEEN THE CITY OF EDINA AND THE
CITY OF HOPKINS FOR THE
2013 STREET & UTILITY IMPROVEMENTS PROJECT
SPECIFICALLY 2nd STREET SOUTH
FROM MONROE AVENUE TO HARRISON AVENUE**

THIS AGREEMENT is entered into between the **CITY OF EDINA**, a Minnesota municipal corporation (hereinafter referred to as "Edina") and the **CITY OF HOPKINS**, a Minnesota municipal corporation (hereinafter referred to as "Hopkins"), with the parties collectively hereinafter referred to as the "Cities".

WHEREAS, the Cities desire to implement the design and construction of 2nd Street South in the cities (the "Project"); and

WHEREAS, Minn. Stat. § 471.59 authorizes two or more governmental units to enter into agreements to jointly or cooperatively exercise any power common to the contracting parties or any similar power; and

WHEREAS, Hopkins entered into a contract with Bolten & Menk to prepare construction documents and Hopkins entered into a contract with Ryan Contracting for the Project construction.

NOW, THEREFORE, in consideration of their mutual covenants the parties agree as follows:

1. **COST ALLOCATION**. Relevant construction costs for 2nd Street South between Monroe Avenue and Harrison Avenue shall be paid as 50% by Edina and 50% by Hopkins as determined per the final construction costs. Project costs are: engineering, inspection, testing and constructions costs. Project costs do not include costs associated with the parties' employees.

2. **OWNERSHIP**. Each party shall own the portion of the Project located within its corporate boundaries.

3. **PAYMENT**. Hopkins will act as the paying agent for all payments to the Contractor and Bolton & Menk. Payments will be made as the Project work progresses and when certified by Hopkins. Hopkins, in turn, will bill Edina for the project costs. Upon presentation of an itemized claim by one agency to the other, the receiving agency shall reimburse the invoicing agency for its share of the costs incurred under this agreement within 30 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving agency, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

7. **CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS.** Any change orders or supplemental agreements that affect the project cost payable by Edina and changes to the plans must be approved by Edina prior to execution of work.

8. **RULES AND REGULATIONS.** Hopkins shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures.

9. **INDEMNIFICATION.** Hopkins agrees to defend, indemnify, and hold harmless Edina against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of Hopkins and/or those of Hopkins employees or agents. However, Hopkins shall not be obligated to defend, indemnify or hold Edina harmless from any claims arising out of or based upon defects in the work performed by the Contractor or negligence of the Contractor or Bolton & Menk, Inc. Edina agrees to defend, indemnify, and hold harmless Hopkins against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement for which Edina is responsible, including future operation and maintenance of facilities owned by Edina and caused by or resulting from negligent acts or omissions of Edina and/or those of Edina's employees or agents. All parties to this agreement recognize that liability for any claims arising under this agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. In the event of any claims or actions filed against either party, nothing in this agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties.

10. **WAIVER.** Any and all persons engaged in the work to be performed by Hopkins shall not be considered employees of Edina for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said Hopkins employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of Edina. The opposite situation shall also apply: Hopkins shall not be responsible under the Worker's Compensation Act for any employees of Edina.

11. **AUDITS.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of Edina and Hopkins relevant to the Agreement are subject to examination by Edina, Hopkins, and either the Legislative Auditor or the State Auditor as appropriate. Edina and Hopkins agree to maintain these records for a period of six years from the date of performance of all services covered under this agreement.

12. **INTEGRATION.** The entire and integrated agreement of the parties contained in this Agreement shall supersede all prior negotiations, representations, or agreements between Edina and Hopkins regarding the Project; whether written or oral.

13. **FUTURE MAINTENANCE.** Each party shall be responsible for their portion of the roadway that is within their corporate boundaries.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by

their duly authorized officials.

CITY OF HOPKINS

BY: _____
Its Mayor

AND _____
Its City Manager

CITY OF EDINA

BY: _____
Its Mayor

AND _____
Its City Manager